

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 76 of 1997

MAZARE NOORANI

Versus

MEMON HASAM MAHMAD SIDHIK

Appearance:

MR CH VORA for Petitioner

CORAM : MR.JUSTICE S.K.KESHOTE

Date of Order:25-6-98

C.A.V. ORDER

Heard the learned counsel for the appellant.
This second appeal has been filed by Shri Muzare Noorani Mandvi Wakf No.60 through its Mutvali-Secretary Hatimbhai Sheikh Adamali. The appellant was the original plaintiff in the suit, out of which this second appeal has arisen. Hatimbhai Sheikh Adamali, through whom the appellant Wakf, has filed this second appeal had expired during the pendency of the first appeal before the first appellate court. His successor in office - Musa Hasamali Rangwala - was ordered to be impleaded in the lower appellate court, as what the learned counsel urged. The learned counsel for the appellant made statement that though the application for substitution was submitted and it was granted, necessary correction in the cause title has not been made and as such, for want of correction, the appellant has been misled and the appeal has been filed on behalf of the Wakf through a dead person.

2. This court on 5th September, 1997 granted time to the appellant to take appropriate proceedings for getting the aforesaid mistake corrected, and thereafter to apply for correction in the cause title of memo of the second appeal. Though more than one month's time was granted, nothing was done by the appellant. The matter was ordered to be placed on Board on 9-10-1997. It appears that after 9th October, 1997 the case was not placed on Board. It has come on Board on 17th January, 1998 on which date it was adjourned to 11th February, 1998. On

1th February, 1998 the learned counsel for the appellant made statement before this Court that despite intimation sent by him to the appellant the desired correction as mentioned in the order dated 5-9-1997 of this court could not be got done. He prayed for four weeks' time as a last chance to get necessary correction done as ordered earlier. That prayer was granted and the matter was ordered to be adjourned to 11th March, 1998. On 11th March, 1998 the matter was adjourned to 13th April, 1998 and on 13th April, 1998 it was adjourned to 17th April, 1998. On 17th April, 1998 the matter was adjourned to 15th June, 1998.

3. The appellant was granted more than sufficient time for getting the alleged mistake corrected in the judgment and decree of the first appellate court as well as to make necessary application for correction in the memo of this appeal. Despite this position the appellant has not cared to take any step. Even it is not the case of the appellant that any step has been taken by it for making necessary correction in the judgment and decree of the first appellate court. In view of these facts the appeal filed by the Trust through a dead person cannot be entertained. In the result this appeal is dismissed.

4. The matter may be placed on Board after the appellant got necessary corrections done in the judgment and decree of the first appellate court and files application for correction of the cause title of the memo of this second appeal.

(S. K. KESHOTE,J)